



## **Case Summary**

Dennis Peterson appeals the trial court's judgment in favor of the Miami Correctional Facility and others ("the Facility"). We affirm.

### **Issue**

The sole restated issue is whether the Facility properly confiscated and refused to return a hotpot that was seized from Peterson's prison cell.

### **Facts**

On July 31, 2005, correctional officers at the Facility conducted a "shake down" of Peterson's cell. App. p. 26. One officer found a hotpot that he believed had been altered, in violation of prison regulations. The hotpot was confiscated, and a disciplinary action was filed against Peterson for "Unauthorized possession, alteration of personal property." Id. On August 26, 2005, Peterson was found not guilty of this offense because the record did "not support charge time frame." Id. at 29. The order finding Peterson not guilty also stated, "hotpot remains confiscated unless released by fire chief or safety/hazard mgr." Id.

Tim Brown, the Facility's fire chief, refused to return the hotpot to Peterson because he found that its wiring had been altered, thus posing a fire hazard. Rewired hotpots have caused approximately twenty-five fires at the Facility. It is unclear from the record whether Brown testified at the disciplinary hearing. Peterson's hotpot ultimately was dismantled and stripped down for recycling.

On June 5, 2007, Peterson filed an action in small claims court seeking compensation for the confiscation and destruction of his hotpot. The court directed that

the parties were to submit their evidence by affidavit. On the basis of an affidavit reflecting Brown's inspection of the hotpot and that it was unsafe, the court entered judgment in favor of the Facility on September 28, 2007. Peterson now appeals.

### **Analysis**

Peterson contends that the confiscation and destruction of his hotpot violated his due process rights. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. McKinney v. McKinney, 820 N.E.2d 682, 688 (Ind. Ct. App. 2005). We note that in the context of deprivations of property, due process can be satisfied by procedures occurring after the government takes property. Squibb v. State ex rel. Davis, 860 N.E.2d 904, 911 (Ind. Ct. App. 2007). Mere postponement of an opportunity to be heard is sufficient if the opportunity ultimately given is adequate. Id.

Peterson seems to contend that after being found not guilty in the disciplinary action, the Facility was required to return his hotpot and could not refuse to do so on the basis of evidence not presented at the disciplinary hearing, i.e. presumably Brown's statements regarding his inspection of the hotpot. This seems possibly to be a collateral estoppel argument, although Peterson does not use that phrase. "Collateral estoppel bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit." Indianapolis Downs, LLC v. Herr, 834 N.E.2d 699, 704 (Ind. Ct. App. 2005), trans. denied. The former adjudication will only be conclusive as to those issues that were actually litigated and determined therein. Id. "Collateral estoppel does not extend to matters that were not expressly adjudicated and can be inferred only by argument." Id.

Here, the disciplinary order finding Peterson not guilty specifically stated that he was not guilty because the record did not “support charge time frame . . . .” App. p. 29. It also left the hotpot in the possession of the Facility fire chief or safety manager. Clearly, the disciplinary hearing officer did not find that the hotpot had not been altered. Rather, Peterson apparently was found not guilty on the basis of a technicality concerning the wording and date of the disciplinary allegation. Collateral estoppel would not prevent the Facility from refusing to return the hotpot to Peterson on the grounds that it was altered and unsafe.

For the sake of thoroughness, we also observe that double jeopardy did not preclude the Facility from refusing to return the hotpot after the disciplinary action not guilty finding. Double jeopardy generally is applicable only to criminal matters and not civil proceedings. Matter of M.B., 666 N.E.2d 73, 79 (Ind. Ct. App. 1996), trans. denied. A civil forfeiture of property, which is basically what occurred here, can sometimes constitute a “punishment” within the meaning of double jeopardy if the forfeiture serves the goal of punishment rather than a remedial purpose. Id. The evidence here is that the Facility’s continued confiscation and ultimate destruction of the hotpot was not punitive in nature, but remedial. It was based upon the determination that hotpot simply was unsafe for use in a prison, which was a legitimate concern given the large number of fires in the Facility that had been caused by altered hotpots. Double jeopardy did not apply here.

As for due process, Peterson was given the opportunity in the small claims court to challenge the Facility’s continued confiscation and ultimate destruction of the hotpot.

Although he was not permitted to appear and present evidence to the court in person, the small claims court ordered that the case be submitted through affidavits. A prisoner who files a civil lawsuit unrelated to his incarceration is not entitled to a transport order to appear in person before the court. Zimmerman v. Hanks, 766 N.E.2d 752, 757 (Ind. Ct. App. 2002). A prisoner is entitled to bring and prosecute a civil action, but may be required to submit his or her case by documentary evidence because of the practical and punitive limitations imposed by incarceration. See id. at 757-58 (citing Hill v. Duckworth, 679 N.E.2d 938, 940 (Ind. Ct. App. 1997)). Thus, the small claims court's decision to proceed via affidavit was entirely appropriate.

Furthermore, Brown's affidavit clearly supports the judgment against Peterson, notwithstanding Peterson's claim that other evidence (which he fails to provide in the record before us) could have supported a judgment in his favor. In reviewing a small claims judgment, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment. Counciller v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005). The affidavit spells out the danger posed by altered hotpots and that the hotpot at issue was altered.

### **Conclusion**

The Facility was entitled to retain possession of and ultimately destroy Peterson's hotpot, notwithstanding the not guilty finding in the disciplinary action. We affirm the small claims judgment in favor of the Facility.

Affirmed.

CRONE, J., and BRADFORD, J., concur.